

AMENDED IN SENATE APRIL 8, 2013

**SENATE BILL**

**No. 272**

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**Introduced by Senator Corbett**

February 14, 2013

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An act to ~~add Section 17533.65 to amend Section 17533.6 of the~~ Business and Professions Code, relating to ~~advertising~~ *business*.

LEGISLATIVE COUNSEL'S DIGEST

SB 272, as amended, Corbett. Advertising *and solicitations: government and* military endorsements.

Existing law makes it unlawful for any person, firm, corporation, or association that is a nongovernmental entity to solicit funds or information, or the purchase of goods or services, by means of a mailing, electronic message, or Internet Web site that contains a seal, emblem, insignia, ~~trade,~~ *trade* or brand name, or any other term, symbol, or content that reasonably could be interpreted or construed as implying any federal, state, or local government connection, approval, or endorsement, unless certain criteria are met. A violation of ~~provisions related to advertising~~ *this provision* is a crime.

This bill would ~~additionally make it unlawful for any person, firm, corporation, or association that is a nongovernmental entity to use any seal, emblem, insignia, trade, or brand name, or any other term, symbol, or content, that reasonably could be interpreted or construed as implying any federal military, state military, military veteran, or military or veteran service organization connection, approval, or endorsement of any financial product, goods, or services, or for purposes of advertising or to promote certain events, as specified, unless the nongovernmental entity has an expressed connection with, or the approval or endorsement of, that entity. The bill would establish specified civil and criminal~~

~~penalties for a violation of its provisions.~~ *revise and recast that provision and would make it unlawful for any person, firm, corporation, or association that is a nongovernmental entity to use any seal, emblem, insignia, trade or brand name, or any other term, symbol, or content that reasonably could be interpreted or construed as implying any federal, state, or local government, military veteran entity, or military or veteran service organization connection, approval, or endorsement of any product or service, including, but not limited to, any financial product, goods, or services, by any means, including, but not limited to, a mailing, electronic message, Internet Web site, periodical, or television commercial.*

*This bill would authorize any person, firm, corporation, or association that is a nongovernmental entity to advertise or promote any event, presentation, seminar, workshop, or other public gathering using a seal, emblem, insignia, trade or brand name, or any other term, symbol, or content, if the person, firm, corporation, or association that is a nongovernmental entity has an expressed connection with, or the approval or endorsement of, a federal, state, or local government, military veteran entity, or military or veteran service organization. The bill would authorize any person, firm, corporation, or association that is a nongovernmental entity to solicit information, solicit the purchase of or payment for a product or service, or solicit the contribution of funds or membership fees, by any means, including, but not limited to, a mailing, electronic message, Internet Web site, periodical, or television commercial disseminated in this state, using a seal, emblem, insignia, trade or brand name, or any other term, symbol, or content, if the person, firm, corporation, or association that is a nongovernmental entity meets certain requirements.*

~~Because a violation of the bill's provisions would be a crime,~~

*By changing the definition of a crime and creating new crimes, the bill would impose a state-mandated local program.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

*SECTION 1. Section 17533.6 of the Business and Professions Code is amended to read:*

*17533.6. (a) ~~It~~ Except as described in subdivisions (b) and (c), it is unlawful for any person, firm, corporation, or association that is a nongovernmental entity to solicit information, or to solicit the purchase of or payment for a product or service, or to solicit the contribution of funds or membership fees, by means of a mailing, electronic message, or Internet Web site that contains to use a seal, emblem, insignia, trade or brand name, or any other term, symbol, or content that reasonably could be interpreted or construed as implying any federal, state, or local government, military veteran entity, or military or veteran service organization connection, approval, or endorsement, unless the requirements of paragraph (1) or (2) have been met, as follows: of any product or service, including, but not limited to, any financial product, goods, or services, by any means, including, but not limited to, a mailing, electronic message, Internet Web site, periodical, or television commercial disseminated in this state.*

*(b) Notwithstanding subdivision (a) and if permitted by other provisions of law, any person, firm, corporation, or association that is a nongovernmental entity may advertise or promote any event, presentation, seminar, workshop, or other public gathering using a seal, emblem, insignia, trade or brand name, or any other term, symbol, or content as described in subdivision (a), if the person, firm, corporation, or association that is a nongovernmental entity has an expressed connection with, or the approval or endorsement of, a federal, state, or local government, military veteran entity, or military or veteran service organization.*

*(c) Notwithstanding subdivision (a), any person, firm, corporation, or association that is a nongovernmental entity may solicit information, solicit the purchase of or payment for a product or service, or solicit the contribution of funds or membership fees, by any means, including, but not limited to, a mailing, electronic message, Internet Web site, periodical, or television commercial disseminated in this state, using a seal, emblem, insignia, trade or brand name, or any other term, symbol, or content as described in subdivision (a), if the person, firm, corporation, or association*

1 *that is a nongovernmental entity meets the requirements of*  
2 *paragraph (1) or (2) as follows:*

3 (1) The nongovernmental entity has an expressed connection  
4 with, or the approval or endorsement of, a federal, state, or local  
5 government entity, if permitted by other provisions of law.

6 (2) The solicitation meets all of the following requirements:

7 (A) The solicitation conspicuously displays the following  
8 disclosure on the front and back of every page of the solicitation:

9  
10 “THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED  
11 OR ENDORSED BY ANY GOVERNMENTAL AGENCY, AND  
12 THIS OFFER IS NOT BEING MADE BY AN AGENCY OF  
13 THE GOVERNMENT.”

14  
15 (B) In the case of a mailed solicitation, the front of the envelope,  
16 outside cover, or wrapper in which the matter is mailed  
17 conspicuously displays the following disclosure:

18  
19 “THIS IS NOT A GOVERNMENT DOCUMENT.”

20  
21 (C) *If permitted by other provisions of law, in the case of a*  
22 *television commercial disseminated in this state, the solicitation*  
23 *conspicuously displays the following disclosure at the top of the*  
24 *television screen for the entire duration of the television*  
25 *commercial:*

26 “THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED  
27 OR ENDORSED BY ANY GOVERNMENTAL AGENCY, AND  
28 THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE  
29 GOVERNMENT.”

30  
31 (E)

32 (D) The disclosure in subparagraph (A) shall be displayed  
33 conspicuously, as provided in subdivision ~~(d)~~ (f), and immediately  
34 below each portion of the solicitation that reasonably could be  
35 construed to specify an amount due and payable by the recipient.  
36 The disclosure in subparagraph (B) shall be displayed  
37 conspicuously, as provided in subdivision ~~(d)~~ (f), and immediately  
38 below the area of the envelope, outside cover, or wrapper that is  
39 used for a return address. *The disclosure in subparagraph (C) shall*  
40 *be displayed conspicuously, as provided in subdivision (f), and at*

1 *the top of the television screen.* The disclosures in subparagraphs  
2 ~~(A) and~~ (A), (B), and (C) shall not be preceded, followed, or  
3 surrounded by symbols, terms, or other content that result in the  
4 disclosures not being conspicuous or that introduce, modify,  
5 qualify, or explain the text of those disclosures.

6 ~~(D)~~

7 (E) The solicitation does not use a title or trade or brand name  
8 that reasonably could be interpreted or construed as implying any  
9 federal, state, or local government connection, approval, or  
10 endorsement, including, but not limited to, use of the term  
11 “agency,” “administrative,” “assessor,” “board,” “bureau,”  
12 “collector,” “commission,” “committee,” “department,” “division,”  
13 “recorder,” “unit,” “federal,” “state,” “county,” “city,” or  
14 “municipal,” or the name or division of any government agency.

15 ~~(E)~~

16 (F) The solicitation does not specify a date or time period when  
17 payment to the soliciting nongovernmental person, firm,  
18 corporation, or association is due, including, but not limited to,  
19 use of the terms “due date,” “due now,” “remit by,” “remit  
20 immediately,” “payment due,” “pay now,” “pay immediately,” or  
21 “pay no later than,” unless the solicitation displays, in the same  
22 sentence as the date or time period specified, how the information  
23 being solicited will be used, a description of the product or service  
24 that is to be provided and to what government agency it shall be  
25 rendered, or how the solicited funds or membership fees will be  
26 used, as applicable.

27 ~~(F)~~

28 (G) The solicitation does not state or imply that payment to any  
29 person, firm, corporation, or association that is not a government  
30 entity is mandatory or required by law, or state or imply that  
31 penalties, fines, or consequences will occur if payment is not made  
32 to the soliciting nongovernmental person, firm, corporation, or  
33 association.

34 ~~(b)~~

35 (d) Notwithstanding Section 17534, any violation of this section  
36 is a misdemeanor punishable by imprisonment in a county jail not  
37 exceeding six months, or by a fine not exceeding two thousand  
38 five hundred dollars (\$2,500), or by both that fine and  
39 imprisonment.

40 ~~(e)~~

(e) Any person who is harmed as a result of a violation of this section shall be entitled to recover, in addition to any other available remedies, damages in an amount equal to three times the amount solicited.

(d)

(f) For purposes of this section, “conspicuous” or “conspicuously” means displayed apart from other print on the page, envelope, outside cover, or wrapper and in not less than 12-point boldface font type in capital letters that is at least 2-point boldface font type sizes larger than the next largest print on the page, envelope, outside cover, or wrapper and in contrasting type, layout, font, or color in a manner that clearly calls attention to the language.

~~SECTION 1. Section 17533.65 is added to the Business and Professions Code, to read:~~

~~17533.65. (a) It is unlawful for any person, firm, corporation, or association that is a nongovernmental entity to use any seal, emblem, insignia, trade, or brand name, or any other term, symbol, or content that reasonably could be interpreted or construed as implying any federal military, state military, military veteran, or military or veteran service organization connection, approval, or endorsement of any financial product, goods, or services, unless the person, firm, corporation, or association has an expressed connection with, or the approval or endorsement of, the federal military, state military, or military veteran entity, or military or veteran service organization.~~

~~(b) A person, firm, corporation, or association that is a nongovernmental entity shall not use any seal, emblem, insignia, trade, or brand name, or any other term, symbol, or content in any advertising or to promote any event, presentation, seminar, workshop, or other public gathering that reasonably could be interpreted or construed as implying any federal military, state military, military veteran, or military or veteran service organization connection, approval, or endorsement of any financial product, goods, or services, unless the person, firm, corporation, or association has an expressed connection with, or the approval or endorsement of, the federal military, state military, or military veteran entity, or military or veteran service organization.~~

~~(c) Any violation of this section is a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by~~

1 a fine not exceeding two thousand five hundred dollars (\$2,500);  
2 or by both that fine and imprisonment.

3 ~~(d) Any person who is harmed as a result of a violation of this~~  
4 ~~section shall be entitled to recover, in addition to any other~~  
5 ~~available remedies, damages in an amount equal to three times the~~  
6 ~~amount solicited.~~

7 ~~(e) For purposes of this section, “state military” has the same~~  
8 ~~meaning set forth in Section 120 of the Military and Veterans~~  
9 ~~Code, and includes the National Guard, State Military Reserve,~~  
10 ~~and the Naval Militia.~~

11 SEC. 2. No reimbursement is required by this act pursuant to  
12 Section 6 of Article XIII B of the California Constitution because  
13 the only costs that may be incurred by a local agency or school  
14 district will be incurred because this act creates a new crime or  
15 infraction, eliminates a crime or infraction, or changes the penalty  
16 for a crime or infraction, within the meaning of Section 17556 of  
17 the Government Code, or changes the definition of a crime within  
18 the meaning of Section 6 of Article XIII B of the California  
19 Constitution.